



# **TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2312, S.D. 1, RELATING TO THE PENAL CODE.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Thursday, March 10, 2016

**TIME:** 3:15 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Albert Cook, Deputy Attorney General

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this bill.

This bill changes the definition of “sexual conduct” in sections 707-750, 707-751 and 707-752, Hawaii Revised Statutes (HRS), Promoting Child Abuse in the first, second, and third degrees. The bill removes the words “homosexuality,” “lesbianism,” and adds “actual or simulated sexual intercourse, including genital-genital contact, oral-genital contact, anal-genital contact, or oral-anal contact, whether between persons of the same or opposite sex” to the definition of sexual conduct.

The Department of the Attorney General supports the removal of the terms “homosexuality” and “lesbianism” as they are not defined anywhere in chapter 707, HRS, and supports expanding the definition of sexual conduct to include the above wording.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 • INTERNET: [www.honolulu.org](http://www.honolulu.org)



KIRK CALDWELL  
MAYOR

LOUIS M. KEALOHA  
CHIEF

MARIE A. McCAULEY  
CARY OKIMOTO  
DEPUTY CHIEFS

OUR REFERENCE **KH-NTK**

March 10, 2016

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: Senate Bill No. 2312, S.D. 1, Relating to the Penal Code

I am Keith Horikawa, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports Senate Bill No. 2312, S.D. 1, Relating to the Penal Code.

This bill appropriately amends the definition of "sexual conduct" as used in the offenses of child abuse in the first, second, and third degrees to mean actual or simulated sexual intercourse, including genital-genital contact, oral-genital contact, anal-genital contact, or oral-anal contact, whether between persons of the same or opposite sex, masturbation, bestiality, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of any person.


We believe that this definition provides better clarity and specificity for investigators, will aid in the investigation and prosecution of offenders, and better protect minors.

The Honolulu Police Department urges you to support Senate Bill No. 2312, S.D. 1, Relating to the Penal Code.

Thank you for the opportunity to testify.

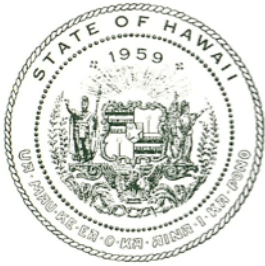
APPROVED:

Sincerely,

  
\_\_\_\_\_  
Louis M. Kealoa  
Chief of Police

  
\_\_\_\_\_  
Keith Horikawa, Captain  
Criminal Investigation Division

HAWAII  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



Chair  
LESLIE WILKINS

COMMISSIONERS:

SHERRY CAMPAGNA  
CYD HOFFELD  
JUDY KERN  
MARILYN LEE  
AMY MONK  
LISA ELLEN SMITH

Executive Director  
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235 S. Beretania #407  
Honolulu, HI 96813  
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March 8, 2016

To: Representative Karl Rhoads, Chair  
Representative Joy San Buenaventura, Vice Chair  
Members of the House Committee on Judiciary

From: Cathy Betts, Executive Director  
Hawaii State Commission on the Status of Women

Re: Testimony in Support, SB 2312, SD1, Relating to the Penal Code

The Commission supports SB 2312, SD1, which would amend our penal code's references to sexual conduct as it relates to promotion of child abuse, thereby aligning it more closely with federal law. It would additionally remove antiquated language regarding sexual orientation.

The current definition of "sexual conduct" within our child pornography statute varies greatly from comparable federal child pornography laws, which address sexual intercourse and sexual contact "whether between persons of the same or opposite sex." In our case, Hawaii's penal code still includes "acts of homosexuality and lesbianism" within the definition of promotion of child abuse. Not only is this language offensive—likening any acts within a same sex relationship as *per se* promotion of child pornography, it is too vague to enforce, raising serious constitutional implications. The Commission supports the change to this language and respectfully urges this Committee to pass SB 2312, SD1.

Thank you for this opportunity to testify.



March 10, 2016

To: Representative Karl Rhoads, Chair  
Representative Joy San Buenaventura, Vice Chair and  
Members of the Committee on Judiciary

From: Jeanne Y. Ohta, Co-Chair

RE: SB 2312 SD1 Relating to the Penal Code  
Hearing: March 10, 2016, 3:15 p.m., Room 325

**POSITION: SUPPORT**

The Hawai'i State Democratic Women's Caucus writes in support of SB 2312 SD1 Relating to the Penal Code.

Laws defining criminal offenses should not codify outdated attitudes towards specific demographic groups—in this case LGBT communities. By singling out “acts of homosexuality and lesbianism” as comparable to bestiality, necrophilia, and sadomasochistic abuse, while excusing identical acts of heterosexuality, the statute reflects historical stigmatization of LGBT communities.

As currently written, the law presents likely constitutional problems due to vagueness, as it fails to adequately define what specifically constitutes “acts of homosexuality and lesbianism.” The Hawai'i State Constitution and the Constitution of the United States provide due process protections against laws that permit citizens to identify what behaviors are illegal.

The current definition of “sexual conduct” is also out of step with comparable federal child pornography laws, which address sexual intercourse and sexual contact “whether between persons of the same or opposite sex.”

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls. It is because of this mission that we respectfully request that the committee pass this bill.



# THE SEX ABUSE TREATMENT CENTER

*A Program of Kapi'olani Medical Center for Women & Children*

*Executive Director*  
Adriana Ramelli

*Advisory Board*

*President*  
Mimi Beams

*Vice President*  
Peter Van Zile

Joanne H. Arizumi

Mark J. Bennett

Andre Bisquera

Marilyn Carlsmith

Dawn Ching

Senator  
Suzanne Chun Oakland

Monica Cobb-Adams

Donne Dawson

Dennis Dunn

Councilmember  
Carol Fukunaga

David I. Haverly

Linda Jameson

Michael P. Matsumoto

Robert H. Pantell, MD

Joshua A. Wisch

DATE: March 10, 2016

TO: The Honorable Karl Rhoads, Chair  
The Honorable Joy San Buenaventura, Vice Chair  
House Committee on Judiciary

FROM: The Sex Abuse Treatment Center  
A Program of Kapi'olani Medical Center for Women and Children

RE: Testimony in Support of S.B. 2312 S.D. 1  
Relating to the Penal Code

Good morning Chair Rhoads, Vice Chair San Buenaventura, and members of the House Committee on Judiciary.

The Sex Abuse Treatment Center (SATC) supports S.B. 2312 S.D. 1, which redefines "sexual conduct" as that term is used in the Hawai'i statutes that describe the crimes of promotion of child abuse in the first, second and third degrees under Hawai'i Revised Statutes (H.R.S.) Chapter 707.

The promotion of child abuse statutes are Hawai'i's child pornography laws, which criminalize the creation, possession, or use of materials that depict children engaged in or used for sexual conduct. Sexual conduct is currently defined in those statutes as "acts of masturbation, **homosexuality, lesbianism**, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor (emphasis added)."

Although we strongly agree with the Hawai'i Penal Code's ban on child pornography and that perpetrators be convicted, the SATC also believes that laws defining criminal offenses should not codify unjust and antiquated attitudes towards specific demographic groups, in this case members of the lesbian, gay, bisexual and transgendered (LGBT) communities.

By singling out unspecified "acts of homosexuality and lesbianism" as being comparable with bestiality, deviate sexual intercourse (necrophilia), and sadomasochistic abuse, while excusing identical acts of heterosexuality, the statutes reflect historical stigmatization of the LGBT communities. The present law could be broadly construed to bar the depiction of two boys or two girls engaged in such 'acts of homosexuality or lesbianism' as holding hands or kissing, although a depiction of a boy and a girl doing the same thing would not be criminalized.

It is also our understanding that the law, as currently written, presents likely constitutional problems due to vagueness, as it fails to adequately define what constitutes proscribed “acts of homosexuality and lesbianism.” Both the Hawai‘i State Constitution and the Constitution of the United States provide due process protections against laws that lack sufficient clarity to permit citizens to identify what behaviors are illegal. Moreover, the current Hawai‘i law is out of step with comparable federal child pornography laws, which address the depiction of sexual intercourse and contact “whether between persons of the same or opposite sex.”

By more clearly defining the offending behavior that the law intends to criminalize, the proposed amendment would make the definition of “sexual conduct” in Hawai‘i’s promoting child abuse statutes better match the one used in federal law concerning similar subject matter and remove the stigmatizing and discriminatory references to “acts of homosexuality and lesbianism.”

We further note that, based on the same rationale stated above, this measure also amends the definition of “sexual conduct” stated in H.R.S. Sec. 712-1210, which is applicable to Hawai‘i’s obscenity offenses.

Therefore, we respectfully urge you to support S.B. 2312 S.D. 1.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 07, 2016 4:10 PM  
**To:** JUDtestimony  
**Cc:** laurie.field@ppvnh.org  
**Subject:** \*Submitted testimony for SB2312 on Mar 10, 2016 15:15PM\*

**SB2312**

Submitted on: 3/7/2016

Testimony for JUD on Mar 10, 2016 15:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Planned Parenthood Votes Northwest and Hawaii	Support	No

**Comments:**

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 09, 2016 1:52 PM  
**To:** JUDtestimony  
**Cc:** annsfreed@gmail.com  
**Subject:** Submitted testimony for SB2312 on Mar 10, 2016 15:15PM

**SB2312**

Submitted on: 3/9/2016

Testimony for JUD on Mar 10, 2016 15:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Hawaii Women's Coalition	Support	No

Comments: The Hawaii Women's Coalition is in strong support of this bill that would remove discriminatory language from our law with respect to LGBT people. The sex conduct laws in reference to child abuse are sufficient without condemning a whole class of human beings as deviant. The archaic language is based on disproven assumptions. Please pass this bill. Mahalo, Ann S. Freed, Co-Chair, Hawaii Women's Coalition

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Good afternoon chairman and committee members,

I am currently a student at the University of Hawaii's Myron B Thompson School of Social Work and was asked to support a Bill that is designed to advance the well-being of one of Hawaii's vulnerable populations. I am in support of this Bill because currently, lesbianism and homosexuality are attached to some of Hawaii's Statutes Laws as being a criminal offense. This has many negative effects and consequences in regards to the LGBTQ population. For a long time now civil rights groups and organizations have worked incredibly hard to promote social justice and equality to all men and women regardless of their age, sex, ethnicity, religion, or sexual preference. We have seen many new laws over the last decade that either were revised or discarded, to promote the safety and equality at risk populations. By supporting this Bill, we can help to remove the public's bias and negative connotation that is attached to the LGBTQ population. We as humans and Americans have been blessed with freedom of choice given to us by our forefathers and Constitution. The 14<sup>th</sup> amendment contains an equal protection clause which clearly states and guarantees that all people would have rights equal to those of all citizens. The current definition of "sexual conduct" as written in state laws does not give the LGBTQ community social justice. Today I humbly ask that you ladies and gentlemen can support this Bill to eliminate the exploitation and discrimination regarding the LGBTQ community. Thank you for your time and consideration in this manner.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 09, 2016 2:35 PM  
**To:** JUDtestimony  
**Cc:** susan.wurtzburg@gmail.com  
**Subject:** Submitted testimony for SB2312 on Mar 10, 2016 15:15PM

**SB2312**

Submitted on: 3/9/2016

Testimony for JUD on Mar 10, 2016 15:15PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Susan J. Wurtzburg	American Association of University Women, Hawaii	Support	No

Comments: Please make this change which updates statutes in a logical manner, making them fit with other states and contemporary understandings of these issues.

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